

amendment would require further search and consideration." However, in discussing claims 22, 24 and 25, it is acknowledged by the examiner that each amendment limits the scope of the invention, i.e. the amended claims are within the scope of the applicants' claims as originally filed.

Assuming that a proper search of the prior art was conducted by the examiner, what was the basis by which "new issues" were considered to be raised (see MPEP 904.02 – General Search Guidelines – "...The search should cover the claimed subject matter and should also cover the disclosed features which might reasonably be expected to be claimed.") especially when it is known that MPEP 2143.03 states that "To establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art." (see also *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

(2) Msika et al. examples

The examiner points to the examples in col. 8, line 52 – col. 13, line 8 and specifically towards the Anhydrous Compact for Protecting and Correcting the Complexion (col. 12) and Total Sunblock Stick (col. 12) as being exemplifications of the applicants invention. However, these examples *are not* water-in-oil emulsions. Even if it is argued that these examples could be made into water-in-oil emulsions, Msika et al. teaches away (i.e., 4-35%) from using emulsifiers in the ranges claimed by the applicants (i.e., at most 0.5%)

Closing

Early and favorable action is earnestly solicited.

Respectfully submitted,
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CERTIFICATE OF MAILING

I hereby certify that the foregoing Preliminary Amendment is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Hon. Assistant Commissioner for Patents, Washington, D.C. 20231, on the date indicated below:

Date: 15 April 2002

By

Howard C. Lee

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